

# 9

## ARTICLE 9

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#### 9.00.00 GENERALLY

The purpose of this article is to provide mechanisms for obtaining relief from certain provisions of this UDO. There are several ways that potential relief from hardship is addressed. Section 9.01.00 addresses relief through requirements regarding non-conforming development. Section 9.02.00 addresses relief through the grant of a variance in a particular situation due to the characteristics of the land to be developed based on the required site design standards. Section 9.03.00 addresses relief through the grant of an administrative waiver in specific situations. Section

9.04.00 addresses relief through recognition of vested rights regarding use and/or design.

## **9.01.00 NON-CONFORMING LOTS, STRUCTURES AND USES**

### **9.01.01 Generally**

- A. Within the zoning and overlay districts established by this UDO there may exist lots, structures, or uses of land which were lawfully established before this UDO was adopted but which do not comply with the requirements set forth in this UDO.
- B. It is the intent of Section 9.01.00 to allow these non-conformities to continue until they are removed or discontinued. It is further the intent of this section that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding structures or uses prohibited elsewhere in the same district.
- C. Non-conforming uses are declared to be incompatible with permitted uses in the district where the non-conforming use is located.
- D. Nothing in Section 9.01.00 shall be construed to prevent the ordinary and routine maintenance and repair of non-conforming structures or structures which contain non-conforming uses provided that:
  - 1. Repairs do not exceed ten (10) percent of the current fair market value of the non-conforming portion of the structure during any period of twelve (12) consecutive months; and
  - 2. The cubic content of the structure is not increased.
- E. A structure damaged or destroyed by any means to an extent of more than fifty (50) percent of its fair market value at time of destruction shall be reconstructed only in conformity with the provisions of this UDO.
- F. A structure that is damaged to an extent less than fifty (50) percent of the fair market value may be restored and occupied as before the damage, provided the following standards are met:
  - 1. Restoration shall be commenced within six (6) calendar months from the date damages were incurred.
  - 2. If reconstruction is not commenced within six (6) months, the reconstruction and use of the land or structure shall thereafter conform to the provisions of this UDO.
- G. Fair market value, where required, shall be determined by reference to current statutory provisions pertaining to real estate assessment and the records of the Carroll County Tax Assessor.
- H. A non-conforming structure or a structure containing a non-conforming use that is declared by the City Manager to be physically unsafe or unlawful due to lack of repairs and maintenance shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the zoning district in which it is located.

### 9.01.02 Non-conforming Lots of Record

A. Any lot of record for which a plat or legal description has been recorded in the Office of the Clerk of Superior Court of Carroll County at the time of adoption of this UDO and which fails to comply with the dimensional requirements for the district in which it is located may, if vacant, be used for any of the uses permitted within the zoning district by this UDO, provided that:

1. The minimum requirements of the zoning district for front, side, and rear yard, open space, height, and floor area shall be complied with.
2. The lot may be used for duplexes or multi-family dwellings when allowed within the zoning district only if the lot meets the minimum lot area requirements for those uses in the district.

#### B. Permitted Modification of Setback Requirements

When a building is proposed on a lot and when on either or both lots which adjoin such lot at the street right-of-way line there exists a principal building which does not conform to the setback requirements of this UDO, the required setback for such building shall be as follows:

1. Where only one (1) said adjoining lot contains a principal building with a non-conforming setback, the setback shall be the computed average of the normal setback requirement and the non-conforming setback, or
2. Where both adjoining lots contain a principal building each with a non-conforming setback, the minimum setback shall be the computed average of the two (2) non-conforming setbacks.

#### C. Adjoining Lots

When two (2) or more adjoining lots of record with continuous street frontage are in one (1) ownership at any time after the adoption or amendment of this UDO and such lots, individually, have an area, width, or street frontage that is less than required by this UDO, such groups of lots may be considered as a single lot for purposes of the minimum width, area, and street frontage required in the district in which they are located.

#### D. Individual lot not meeting minimum lot size requirements

Except as set forth in subsection 9.01.02 (A) of this section, in any district in which single-family dwellings are permitted, any lot of record existing at the time of adoption or amendment of this UDO which has an area, width or depth less than that required by this ordinance may be used as a building site for a single-family dwelling. In the case of such a lot, when it is not possible to provide the required side yards and at the same time build a minimum width single-family dwelling, the Board of Development Appeals is hereby authorized to reduce the side yard requirements for such lot the minimum amount necessary for a reasonable dwelling, but in no case shall each of the side yards be reduced by less than five (5) feet in width.

#### E. Individual lot not meeting street frontage requirements

Any lot of record existing at the time of the adoption or amendment of this UDO, which has street frontage that is less than is required by this UDO, may be used if access to a publicly dedicated and maintained street can be demonstrated through a recorded easement.

### **9.01.03 Non-conforming Structures**

A lawfully established structure that becomes non-conforming at the time of adoption of this UDO may continue subject to the following requirements:

- A. The structure is non-conforming with only the following site design standards:
  - 1. Minimum lot area;
  - 2. Maximum lot coverage or impervious surface ratio;
  - 3. Maximum building height;
  - 4. Minimum front, side, and rear yard setbacks; and
  - 5. Other requirements regarding building location on the lot.
- B. The non-conforming structure shall not be enlarged.
- C. The structure or portion thereof may be altered to decrease its degree of non-conformity.
- D. If a non-conforming structure is moved for any reason for any distance, it shall be brought into conformance with the site design standards of the zoning district to which it is moved.
- E. When any use of a non-conforming structure is discontinued for a continuous period in excess of six (6) months, any future use of the structure is permissible only when the structure has been brought into compliance with the provisions of this UDO. Holding of an occupational tax certificate does not in itself constitute continuance of a business.
- F. Any existing use of a non-conforming structure may be changed to another use upon the finding by City Manager that the proposed use:
  - 1. Is similar in its operation and effect on surrounding properties;
  - 2. Will not generate more automobile or truck traffic, create more noise, vibration, smoke, dust or fumes, is not a more intensive use of structures than the existing use, and is not in any way a greater nuisance to the adjoining properties than the existing use; and
  - 3. Will not have a negative impact on the public health, safety, and welfare.

### **9.01.04 Non-conforming Uses**

A lawfully established use that becomes non-conforming at the time of adoption of this UDO may continue subject to the following requirements:

- A. A structure containing a non-conforming use shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered

- except to change the use to a use permitted in the zoning district in which it is located.
- B. A non-conforming use shall not be extended to occupy any land outside the existing structure devoted to the use. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this UDO.
  - C. A non-conforming use which is superseded by a permitted use in a structure, or structure and land in combination, shall not be resumed.
  - D. A non-conforming use of a structure, or structure and land in combination, that is discontinued or abandoned for six (6) consecutive months (except when government action impedes access to the premises) shall not be resumed. The structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which it is located.

#### **9.01.05 Termination of Detrimental Non-conforming Structures and Uses**

There are found to be certain uses of land and structures, as listed in Sections 9.01.05(A)(1) and (2), which have an adverse effect on the carrying out of the City of Carrollton Comprehensive Plan. Such uses shall be discontinued after the time periods set forth in Section 9.01.05(A) below, irrespective of the provisions for non-conforming uses set forth in Sections 9.01.01 through 9.01.04 above.

- A. The following uses shall be removed or made conforming within the specified amortization period. Said amortization period shall commence upon the effective date of this UDO.
  - 1. Fences, walls, and vegetation which constitute a hazard by virtue of impairing sight distances at a curve or intersection shall be made conforming within ninety (90) days.
  - 2. Non-conforming open storage operations include activities such as truck parking, automobile wrecking, salvage material storage, and similar uses. Such non-conforming operations shall be made conforming with the site design requirements for fencing, screening, or buffering, as set forth in Articles 4 and 5 within two (2) years following adoption of this UDO.
  - 3. All site design requirements for fencing, screening, or buffering of commercial or industrial uses, as set forth in Articles 4 or 5 of this UDO, shall be met within two (2) calendar years.

#### **9.01.06 Regulation of Non-conforming Signs**

The following provisions shall apply to signs which were conforming immediately prior to the adoption of this UDO, but which became non-conforming at the time of adoption of this UDO.

- A. New on-site signs related to legally established non-conforming uses may be erected, provided they comply with the sign regulations applicable to the use in the most restrictive district in which the use is permitted.
- B. Non-conforming signs may stay in place until one (1) of the following conditions occurs:
  - 1. The sign deteriorates or is damaged to the extent that it becomes a hazard; or
  - 2. The sign has been damaged to such an extent that structural repairs are required to restore the sign. A structural repair is any repair necessary to maintain the stability and safety of the sign.
- C. The owner of the sign shall obtain a permit for the continuation of the sign, subject to the restrictions of this section. Application for such permit shall be filed within ten (10) days of the notice of non-conformance. There shall be no charge for this permit. Failure to apply for such permit within ten (10) days shall result in waiver of the protections afforded non-conforming signs by this section and the display of such sign shall be thereafter unlawful.
- D. Minor repairs and maintenance of non-conforming signs such as repainting, electrical repairs, neon tubing repairs shall be permitted. However, no structural repairs or changes in the size or shape of the sign shall be permitted except to make the sign comply with the requirements of this UDO.
- E. A non-conforming sign damaged by fire or other causes to the extent of more than fifty (50) percent of its assessed value shall not be repaired or rebuilt except in compliance with the standards for the type and location of sign.
- F. A non-conforming sign damaged by fire or other causes to the extent of more than fifty (50) percent of its assessed value which is not repaired or rebuilt in compliance with this section shall be removed from the lot, along with all associated debris, and disposed of appropriately.
- G. A non-conforming sign shall not be replaced by another non-conforming sign, except that the substitution or interchange of poster panels, painted boards, or dismountable material on non-conforming signs shall be permitted.

## 9.02.00 VARIANCES

### **9.02.01 Generally**

- A. The Board of Development Appeals (BDA) may authorize upon appeal in specific cases such variances from the terms of this UDO as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship.
- B. A variance shall be authorized only so that the spirit of this UDO shall be observed, public safety and welfare secured, and substantial justice done.
- C. A variance shall not be granted for a use of land or structures that is prohibited by this UDO in the district in question.
- D. The existence of a non-conforming use on adjacent land, buildings, or structures in the same or in other districts shall not constitute a reason for a variance.
- E. The Board of Development Appeals (BDA) shall be responsible for consideration and a decision regarding requests for variances, pursuant to the notice and hearing requirements set forth in Section 10.03.04.

### **9.02.02 Types of Variances**

A request for a variance shall be limited to the following dimensional standards: maximum building height; minimum lot width; required spacing for driveways; minimum front, side, or rear yard setbacks; or dimensional standards for parking or loading spaces. Furthermore, other requests for variances, as specified in this UDO, shall follow the procedures and requirements provided in this section.

### **9.02.03 Requirements for Variances**

A variance may be granted in such individual cases of unnecessary hardship upon finding by the BDA that all of the following conditions have been met:

- A. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;
- B. Such conditions are peculiar to the particular piece of property involved;
- C. Such conditions are not a result of any action of the property owner or applicant;
- D. The application of this UDO to this particular piece of property would create an unnecessary hardship;
- E. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this UDO;
- F. A literal interpretation of the provisions of this UDO would deprive the applicant of rights commonly enjoyed by other properties of the zoning district in which the property is located;

- G. Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the zoning district in which the applicant's property is located;
- H. The requested variance will be in harmony with the purpose and intent of this UDO and will not be incompatible with the neighborhood or to the general public welfare;
- I. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure; and
- J. The variance is not a request to permit a use of land or structures which are not permitted by right in the zoning district involved.

#### **9.02.04 Procedures for Variances**

##### **A. Applications**

- 1. An application for a variance shall include the information required for all applications, as set forth in Article 10.
- 2. An application for a variance shall include a statement explaining how the variance request conforms to all requirements listed in Section 9.02.03.

##### **B. Review of applications**

- 1. An application for a variance shall be reviewed by the City Manager for compliance with the requirements set forth in Article 10.
- 2. A public hearing shall be scheduled before the BDA.
- 3. Notice of the public hearing shall be provided pursuant to the requirements of Article 10.
- 4. The BDA shall conduct the public hearing in accordance with the procedures set forth in Article 10.
- 5. The BDA shall approve, deny, or approve with conditions the application for variance, based upon findings regarding conditions set forth in Section 9.02.03.
- 6. The City Manager shall issue a written order to the applicant when the variance is approved or approved with conditions by the BDA.

##### **C. Expiration of variance approval**

Any variance authorized by the BDA, for which construction has not commenced within one (1) year from the date on which the decision of the BDA becomes final, shall be deemed abandoned and be void and of no further force and effect.

##### **D. An appeal of a decision of the BDA shall be to the Superior Court of Carroll County.**

#### **9.03.00 ADMINISTRATIVE WAIVER**

##### **9.03.01 Authority and Limitations**

The City Manager is authorized to reduce specific site design and development



standards of this UDO where the intent of the UDO can be achieved and equal performance obtained by granting a waiver of standards. The authority to grant a waiver shall be limited to the following:

- A. A reduction in the minimum front, side, or rear yard setbacks for a single lot, provided the following standards are met:
  - 1. The reduction is necessary because of geologic conditions, topography, or the inability to adhere to landscaping, buffer and tree protection standards of this UDO.
  - 2. The reduction is limited to a maximum of twenty (20) percent of the minimum standard.
- B. A reduction in the parking requirement, provided the following standards are met:
  - 1. The reduction is necessary in order to implement landscaping, buffer, and tree protection standards of this UDO; and
  - 2. The reduction is limited to either two (2) spaces or two (2) percent of the parking requirement, whichever is greater; and
  - 3. The reduction does not limit the availability or location of required handicapped parking.
- C. A reduction in landscaping or buffer requirements, provided the following standards are met:
  - 1. The reduction is necessary due to particular physical conditions of the property, such as the shape of the lot, topography, presence of bodies of water, or other natural features;
  - 2. The reduction is limited to ten (10) percent of the otherwise required width of the buffer; and
  - 3. The reduction is limited to ten (10) percent of the otherwise required plant materials.

### **9.03.02 Annual Report Required**

An annual report shall be prepared by the City Manager and shall summarize the number and type of administrative waivers granted in the previous year. Such reports shall be prepared in January of each year for the previous calendar year. Annual reports shall be presented to the Planning Commission for review and comment. Annual reports, together with recommendations from the Planning Commission, if any, shall be forwarded to the Mayor and City Council.

## **9.04.00 VESTED RIGHTS**

The purpose of Section 9.04.00 is to provide a method to recognize vested rights and works-in-progress that were authorized prior to the adoption of this UDO.

### **9.04.01 Application**

In order to determine vested rights for a particular project, the affected party shall submit an application which shall include evidence that demonstrates

entitlement to vested rights pursuant to applicable State law. The following information shall be provided:

- A. Citation of the specific section(s) of the UDO that affect the development of the property.
- B. Identification of the exact dates that specific ordinances or amendments to the UDO were passed by the Mayor and City Council.
- C. Complete applications shall be submitted to the City Manager who will make a determination within thirty (30) days of the submittal of the application.

#### **9.04.02 Expiration of Approval**

An approval for a work-in-progress shall automatically expire in one (1) year where no additional development activity is evident and/or a building permit has not been obtained. Any further work on the site shall require an application for a development plan in full compliance with the standards and procedures of this UDO.